IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.462 OF 2007
IN
APPEAL NO.793 OF 2005
IN
ARBITRATION PETITION NO.434 OF 2004

V/O Tyzahpromexport ..Appellant.
Vs.
Mukand Limited ..Respondent.

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Shri S.C. Naidu with Shri Deepak Bhattacharya with Shri Rui Rodrigues, Shri S. Jadhav with Shri Abhijeet Desai i/b ALMT Legal for the Appellant in support of the Notice of Motion.

Shri D.D. Madan, Senior Advocate with Shri Kishore Shriyal i/b Udwadi & Udeshi for the Respondent.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

9th March, 2007.

P.C. :

1. The relief that has been sought in the Notice of Motion is to the effect that an order dated 9th January, 2006 passed by this Court in Notice of Motion 4043 of 2005 be recalled and an earlier order dated 24th November, 2005 passed in Notice of Motion 2711 of 2005 be restored. The second relief is that the order dated 9th January, 2006 be modified and the execution of the arbitral award

be stayed.

2. Against the dismissal of the Arbitration Petition by the Learned Single Judge the Appeal has been filed which stands admitted. On 24th November, 2005 a conditional order was passed by the Division Bench staying the operation of the order of the Learned Single Judge and of the arbitral award subject to the Appellant depositing an amount of US $ 2,25,235 and an amount of US $ 2,30,070 within one week of the receipt of the amount from the State Bank of India. Admittedly, the direction contained in the conditional order was not observed. Thereupon a Notice of Motion was taken out for modification of the order dated 24th November, 2005. The Notice of Motion was dismissed by the Division Bench on 9th January, 2006. In a further Notice of Motion taken out by the Respondent to the Appeal, the Division Bench by an order dated 9th January, 2006 clarified, that it was now open to the Respondents to enforce the arbitral award during the pendency of the appeal. According to the Appellant, an amount of US $ 7,39,305 has been realized in the execution proceedings. The undisputed position, however, is that the aforesaid amount does not cover the entire amount due and payable under the award

inclusive of interest. In these circumstances, we find no justification for recalling the order dated 9th January, 2006 passed by the Division Bench or for granting the relief that has been sought in the Notice of Motion. Mere admission of the Appeal cannot enure to the benefit of the Appellant at the present stage. While admitting the Appeal, the Division Bench had granted a conditional stay. Upon non-compliance of those conditions, the award has become executable. There will be no justification therefore to restrain the Respondent from proceeding ahead with the execution of the award. The Notice of Motion is accordingly dismissed.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)